

This letter discusses whether Combustion Turbine Generators ("CTGs") can qualify as building materials for purposes of the enterprise zone building materials exemption from sales tax. See 86 Ill. Adm. Code 130.1951. (This is a GIL).

August 25, 2000

Dear Xxxxx:

This letter is in response to your letters dated May 31, 2000 and July 31, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to provide additional information for our request for a General Information Letter ('GIL') pursuant to 2 Ill. Admin. Code 1200.120. As you know from our GIL dated May 31, 2000 and our previous discussions, our client requests a ruling on qualified building materials which will be incorporated into real estate located in an enterprise zone by remodeling, rehabilitation, or new construction.

Specifically, the issue is whether the Combustion Gas Turbines and Generators (collectively, 'CTGs') qualify as building materials for incorporation into real estate by new construction under 86 Ill.Admin.Code 130.1951.

Our client has contracted to purchase two new CTGs for its building project in an Illinois enterprise zone. Each turbine weights 199,000 pounds (99.5 tons). Each generator weights 214,000 pounds (107 tons).

The CTGs are designed for the location in which they will operate. For example, the CTGs have been engineered to account for seismic requirements, temperature range, humidity range, wind loads, and air quality.

At our client's building project site, the real estate has been excavated for new foundations, underground conduits, piping for both water and natural gas, cabling, grounding gird, and new roads. New concrete and steel will be used to build the foundation in the real estate. The preparation of the site and the construction of the foundations took almost one year. (Under the regulation, the concrete and steel for the foundations are building materials for incorporation into real estate in an enterprise zone by new construction.)

Each CTG, at a combined weight of 413,000 pounds (206.5 tons), will be bolted to their new housing using specially-designed anchor bolts and then connected to the new power electric system. The housing is a building constructed on the concrete and steel foundations, described above. The power electric connection will be made using the new interconnecting conduits, wiring, and cable tray. The gas and water pipes will be attached to concrete foundations and integrated into the facility using permanent connections. In other words, the CTGs will be anchored to the building and connected to the electric system. (Under the regulation, electrical systems qualify as building materials for incorporation into real estate in an enterprise zone by new construction.)

Like the appliances described in 86 Ill.Admin.Code 130.1951 (7)(G), the CTGs will be physically incorporated into real estate because they become part of a component of a building's electrical system. The CTGs will be anchored with bolts to the housing and then become part of the complex's power electric system. From this perspective, the CTGs are like free-standing appliances, such as stoves, that become part of a component of a building's electrical system and qualify as non-taxable building materials under the regulation.

Four important facts demonstrate that the CTGs will be physically incorporated into real estate.

1. The CTGs location, which requires specific seismic and atmospheric modifications to the CTGs, foundation, and housing.
2. The preparation and construction of the site, including the concrete and steel foundations, required almost one year to complete.
3. The anchoring of the CTGs to the housing and foundation using specially-designed anchor bolts.
4. The immense weight of the CTGs—each CTG weighs a combined 413,000 pounds, or 206.5 tons.

These facts show that the CTGs are indeed heavy appliances are not intended to move from place to place. Rather, they will be physically incorporated into real estate in an enterprise zone. Thus, the CTGs should qualify as non-taxable building materials for incorporation into real estate in an enterprise zone.

Based on the facts and the Department's regulation, we request that the Department issue a General Information Letter stating that our client's CTGs qualify as building materials for incorporation into real estate.

Thank you in advance for your prompt attention to this matter. Please feel free to call ##### if you have any questions or need any additional information. Also, please call us before issuing a letter that does not indicate that our client's CTGs qualify.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. Section 130.1951(a)(7)(G) provides, as an example, that gross receipts from sales of "built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the real estate can qualify for the deduction"

You have indicated in your correspondence that the CTGs will be purchased from a retailer that is located within the enterprise zone. You have also described how the CTGs will be permanently installed into real estate in the enterprise zone. It is our opinion that the CTGs, purchased and installed as described would qualify as building materials exempt from sales tax under the enterprise zone exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

Enc.